

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DARIN FIELDS,

Petitioner,

v.

Civil Action No. 5:17CV26
(STAMP)

JOE COAKLEY, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The pro se¹ petitioner, Darin Fields, is serving a sentence imposed by the United States District Court for the Eastern District of Louisiana. ECF No. 1 at 1-2. The petitioner filed a Petition for Habeas Corpus Under 28 U.S.C. § 2241, in which he alleges that Mathis v. United States, 136 S. Ct. 2243, 195 L.Ed.2d 604 (2016), among other cases, establishes that petitioner is no longer considered a career offender. ECF No. 1-1 at 1. The petitioner requests that "his sentence [] be vacated, and adjusted to the proper guideline term." Id. at 2.

This civil action was referred to United States Magistrate Judge Michael John Aloï under Local Rule of Prisoner Litigation Procedure 2. Magistrate Judge Aloï issued a report and

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

recommendation (ECF No. 10) recommending that the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice. The petitioner did not file objections to the report and recommendation. For the following reasons, this Court affirms and adopts the report and recommendation in its entirety.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to findings where no objections were made, such findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Because the petitioner did not file any objections to the report and recommendation, the magistrate judge's findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

In his report and recommendation, the magistrate judge correctly noted that the petitioner has not sought relief under any permissible ground in his petition. Id. at 8. Specifically, petitioner's claims "do not relate to the execution or calculation of sentence by the BOP. Instead, the claims relate to the validity of the [p]etitioner's sentence imposed in the Eastern District of Louisiana." Id. The magistrate judge also properly noted that

since petitioner is not challenging his conviction, the test under In re Jones, 226 F.3d 328 (4th Cir. 2000), is inapplicable. Id. The magistrate judge then proceeded to analyze the petitioner's claim under the four-part test established in United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018). Id. at 9. The magistrate judge correctly found that "[p]etitioner cannot meet the second element of the Wheeler test "because any change to the settled law which established the legality of [p]etitioner's sentence has not been deemed to apply retroactively to cases on collateral review." Id. Specifically, the magistrate judge properly noted that neither Mathis nor Descamps apply retroactively in the Fourth Circuit. Id. The magistrate judge thus recommended that the petitioner's petition (ECF No. 1) be denied and dismissed without prejudice for lack of jurisdiction. Id. at 10.

Upon review, this Court finds no clear error in the determinations of the magistrate judge and thus upholds his recommendation.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 10) is AFFIRMED and ADOPTED in its entirety. Accordingly, the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) is DENIED and DISMISSED WITHOUT PREJUDICE.

This Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 22, 2019

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE